

STATE OF MICHIGAN
COURT OF APPEALS

LOFGREN HARBORSIDE, INC.,

Plaintiff-Appellant,

v

DR. DENNIS PAULL,

Defendant-Appellee.

UNPUBLISHED

October 23, 2003

No. 240691

Cheboygan Circuit Court

LC No. 00-006731-CH

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order awarding defendant costs and fees. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant owns a small parcel of land which was carved from a larger parcel now owned by plaintiff. Plaintiff filed suit alleging that the description of defendant's property clouded its title. The case required the trial court to determine whether defendant's parcel was rectangular in shape or, as plaintiff alleged, was shaped like a trapezoid. Defendant retained an expert witness, Brian Fullford, who analyzed prior surveys, prepared his own survey, and testified at trial. The trial court found in favor of defendant. In doing so, the trial court specifically agreed with the position taken by Fullford.

Defendant filed a motion for taxation of costs pursuant to MCR 2.625. Defendant sought \$4,872.33 in costs, of which \$4,702.33 was for the reasonable and necessary expenses incurred by Fullford. Fullford submitted both an affidavit in which he stated that the expenses were reasonable and necessary, and an invoice that contained a breakdown of his services. At a hearing on defendant's motion, plaintiff objected to the fee sought for Fullford on the ground that some of Fullford's activities were not reasonably necessary to prepare for trial and went only to defendant's personal benefit. The trial court observed that the fee charged by Fullford was significantly higher than the \$675 fee charged by plaintiff's expert, but stated that it appeared that Fullford incurred the expenses as part of the entire process of conducting a survey and preparing a factual basis for his opinion. The trial court awarded defendant the requested costs, including the full fee requested for Fullford.

Expert witness fees are taxable as costs. MCL 600.2164(1); MCL 600.2421b(1). We review a trial court's decision to award expert witness fees as an element of costs for an abuse of discretion. *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 466; 633 NW2d 418 (2001).

Plaintiff argues that the trial court abused its discretion in awarding defendant the full fee requested for Fullford. We disagree and affirm the trial court's order awarding defendant costs, including the full fee requested for Fullford. Fullford submitted an affidavit in which he stated that his expenses were reasonable and necessary and an invoice detailing the categories into which his expenses fell. Plaintiff's assertion that some of the activities in which Fullford engaged were unnecessary is completely unsubstantiated. The trial court inquired into the reasonableness of Fullford's activities and expenses, and ultimately determined that his requested fee was reasonable. Based on the record, we cannot conclude that the trial court abused its discretion in awarding defendant the entire fee requested for Fullford. *Id.*, 466-467.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello